

Call to Order:

The meeting was called to order at 7:34 p.m. Present were Chair Joan Duff (arrived at 7:59 p.m.), Vice Chair Vincent Chiozzi, members Jay Doherty, Lelani Foster and associate member Zach Bergeron; also present were Paul Materazzo, Director Planning, Jacki Byerley, Planner and Tom Urbelis Town Counsel.

29 Boutwell Road:

Mr. Chiozzi opened the continued public hearings for a Definitive Subdivision and Special Permit for Earth Movement for a 4-lot subdivision located at 29 Boutwell Road. He informed the Board that the developer had sent in a written request that this hearing be continued without discussion.

On a motion by Mr. Bergeron, seconded by Ms. Foster, the Board moved to continue the public hearings for a Definitive Subdivision and Special Permit for Earth Movement for a 4-lot subdivision located at 29 Boutwell Road to January 14, 2014 at 7:45 p.m. **Vote:** Unanimous (4-0).

It should be noted that Ms. Byerley left the room after the discussion of 29 Boutwell Road.

Executive Session

On a motion by Ms. Foster seconded by Mr. Doherty the Board moved to go into Executive Session to discuss confidential communications with Town Counsel for legal advice, and to discuss litigation strategy in the cases of Lyons v. Andover Planning Board and that the Vice Chairman declare that an Open Session would be detrimental to the Town's litigation strategy position, and to return to Open Session. The Vice Chairman so declared that an Open Session would be detrimental to the Town's litigation position. Roll Call: Mr. Bergeron yes, Ms. Foster yes, Mr. Doherty yes, and Mr. Chiozzi yes.

At 7:58 P.M., the Board motioned to adjourn from Executive Session to move to Open Session and not to return to Executive Session. Roll Call: Mr. Bergeron yes, Ms. Foster yes, Mr. Doherty yes, and Mr. Chiozzi yes.

The Board returned to open session at 7:59 p.m. It should be noted that Chair Joan Duff arrived at the meeting at 7:59 p.m. and Ms. Byerley returned to the meeting at 7:59 p.m.

165 Haverhill Street – Merrimack Valley YMCA:

Ms. Duff opened the continued public hearing on an application submitted by the Merrimack Valley YMCA for a Special Permit for Major Non-Residential Project for the expansion and renovation of the existing facility located at 165 Haverhill Street.

Ms. Byerley updated the Board on the new information received from the applicant. The Fire Prevention Officer has approved the removal of two parking spaces for emergency access instead of the originally requested 4 spaces. He is also okay with the placement of the sign indicating that an area is for emergency access only. The applicant presented traffic findings and recommendations, phasing and landscaping plans at the last meeting that the Board is satisfied with. The open items still to be addressed are the stormwater management review, being

165 Haverhill Street – Merrimack Valley YMCA (cont'd):

performed by CEI, and the DPW comments which includes sewer capacity. The outstanding CEI items are the O&M Plan, the monitoring of the infiltration function with the observation ports and the references of thickness of an oil layer. CEI made observations about snow storage in proximity to wetlands, but that is in the Conservation Commission's jurisdiction. The DPW submitted comments today and the applicant's engineer responded to them today. On Friday, December 6th there will be a meeting on sewer capacity with the Town's Sewer Superintendent, Town Engineer, and the Health Director.

Rick Feldman of Feldman Development Partners representing the applicant asked that the Board approve the project subject to the meeting on Friday. The YMCA would like to announce their approvals as soon as possible to jumpstart fundraising. They do not plan on breaking ground until March or April. Mr. Chiozzi stated that in his time on the Board they have never voted on a project that is almost done. The Board suggested that they put the YMCA on agenda for the next meeting in December.

Domenic Terranova, an Attorney representing the Andover Gardens condominium complex, abutters directly to the west of the property, asked if he could make an appointment with Ms. Byerley to look over the entire file with her. He has concerns about landscaping and screening. The condominiums were built in the late 1960s, include subsurface apartments and they are concerned about the land and water table being disturbed considerably. Sheet No. 5 shows a no build/no disturb zone and he does not feel that the applicant has honored. Mr. Bergeron stated that the applicant has tried to cover the drainage issues. Ms. Byerley added that the applicant is required to meet stormwater management regulations.

On a motion by Mr. Bergeron seconded by Ms. Foster the Board moved to continue the public hearing for a Special Permit for Major Non-Residential Project for the expansion and renovation of the existing facility located at 165 Haverhill Street to December 17, 2013 at 8:30 p.m.

Vote: Unanimous (4-0).

15 Salem Street – Phillips Academy Wellness Center:

Ms. Duff opened the public meeting for the site plan review Dover use for a 68,900 sf building located at 15 Salem Street to be used by Phillips Academy as a wellness center.

Ms. Byerley informed the Board that Phillips Academy will be tearing down an existing building located at 15 Salem Street to build the new wellness center. This application is coming in as Dover use because it is an educational use. Ms. Byerley reviewed the comments from the IDR that was held in November. The Fire Department will work with the applicant at the time of construction on control panel locations and other construction documents. They are satisfied with the emergency access to the site which is a driveway directly across from Highland Road leading to a parking lot and gives them access to the site. The Police are satisfied with the site design for pedestrian and vehicle access. The Health Department is requesting more information on sewer connections and details on the site plan. The DPW stated that the scaling and some of the utilities on the plan need to be corrected. Ms. Byerley stated that she is not recommending a drainage peer review at this time because of the disturbance that is already taking place on the site and the amount of disturbance for the new wellness center. Most of the information that the

15 Salem Street – Phillips Academy Wellness Center (cont'd):

applicant has to resubmit is engineered utility information. The applicant has also submitted a letter requesting a waiver of the additional fee of \$0.25 per gsf filing fee. The \$500 administrative fee has been paid. The Board has previously waived this fee for educational uses.

Ms. Duff asked how much the additional fee is and she was told \$4,200.00. Mr. Bergeron asked if the Board has ever had a Dover use pay the fee. Ms. Byerley and Mr. Materazzo stated that they could not recall ever not granting the requested waiver. Ms. Foster asked if they could reduce the fee instead. Ms. Byerley stated that she could research past Dover uses and have more information at the next meeting. Ms. Duff asked if the Board has given Phillips and other schools the benefit of it in the past and Ms. Byerley answered that they had.

John Galanas, Capital Project Manager at Phillips Academy gave an overview of the project. He stated that they spent the past year analyzing the campus and chose this particular site because it is at the crossroads of the three busiest buildings on campus. The current health center is on the outskirts of campus and not well positioned to meet the needs of the students. This site was chosen out of 7 or 8 sites that were proposed. The Historic Preservation Commission has issued a 1 year demolition delay in May of this year on the existing house. They have not yet found anyone interested in purchasing and moving the house.

On a motion by Mr. Bergeron seconded by Ms. Foster the Board moved to continue the public meeting for the site plan review Dover use for 15 Salem Street to January 14, 2014 at 7:30 p.m.

Vote: Unanimous (5-0).

Medical Marijuana:

Mr. Materazzo informed the Board that the working group is in the process of setting rules for the operation of marijuana facilities in Town. The Attorney General has ruled that no municipality can ban such facilities. The goal is to identify suitable locations with minimal impacts to schools and areas where children congregate, as well as identifying areas that will be secure. The program will be administered by the Massachusetts Department of Public Health. In the first year, up to 35 registered marijuana treatment facilities including distribution and indoor growing facilities will be allowed in the Commonwealth. Additional centers will be considered in future years. Marijuana products can include edible food products, aerosols and oils.

MassDPH accepted Phase 1 applications over the summer and a handful were identified this fall to move on the Phase 2. There have been seven identified in Essex County to move on to Phase 2. Each county may have five facilities total. No applications for Phase 2 are identified for Andover. The Town still needs to be proactive and have a plan in place for the future.

Mr. Chiozzi asked where a facility would be allowed under current zoning. Mr. Materazzo stated ID2, Downtown General Business, Mixed Use, Office Park and Limited Service districts. A facility cannot be located closer than 500 feet from schools or place where children congregate. The goal is to bring this bylaw to Town Meeting 2014, and the working group has developed a draft that identifies possible four locations. The locations are the Lowell Junction area, Route 133, the ID2 area on River Road and Doctor's Park on Haverhill Street which are all areas where medical use is currently allowed. After a meeting this morning the group eliminated

Medical Marijuana (cont'd):

the Route 133 area because of its proximity to playgrounds, and decided to expand the Lowell Junction district.

Ms. Duff asked about the area targeted on Haverhill Street and its proximity to playing fields. Mr. Materazzo stated that the playing fields are too far away from the targeted area, but he welcomes comments like that from residents in case they see something that the group does not.

Mr. Chiozzi asked when the warrant closes and Mr. Materazzo informed him that the warrant closes at the end of January. Mr. Chiozzi noted that they don't have a lot of time, and Mr. Materazzo agreed, but added the draft is pretty close to being final. Attorney Urbelis stated that there are two aspects to this bylaw. One is the verbiage of the conditions of the special permit for the zone. The Attorney General has allowed communities to use the special permit process in allowing these facilities in Town. The second aspect is deciding where the district will be. Mr. Chiozzi asked if the "unreasonably detrimental" part of the special permit language would still apply. Attorney Urbelis replied that since Town Meeting vote will determine the districts, the Planning Board would have to have very solid reasons for a denial. There are approval conditions in the draft of the Bylaw that the Board would consider, and then the Board can add supplemental conditions as appropriate. The Board must also consider that it is a Town accepted referendum.

Mr. Doherty asked if they were partial to any location and Attorney Urbelis said that they are focused on the four locations that Mr. Materazzo identified for the Board for various reasons. Mr. Doherty then asked if they would be having any public forums. Mr. Materazzo stated he has not heard from the public in a negative way, and there have been several stories in the newspaper on it. Ms. Foster asked if the three year special permit update was typical. Mr. Materazzo stated that it is an opportunity for the community to check back in with any dispensary. It could be a different length of time, but the group felt that to have them come back sooner rather than later would be good for checks and balances. Ms. Foster asked if they would need to refile and pay the associated fees for the update. Mr. Urbelis stated that ordinarily they would.

Ms. Duff asked what would happen if a nursery school wanted to open in a designated zone. Mr. Materazzo stated that it would be an issue for Town Counsel. Mr. Bergeron asked if the Town's proposed regulations are more stringent than MassDPH. Mr. Materazzo replied that they are because they identify specific locations. Mr. Doherty stated that the Board needs an idea of what to expect at Town Meeting. Mr. Materazzo stated that the question at Town Meeting is if the residents want to designate a specific location or not. Mr. Urbelis reminded the Board that the Town had this discussion ten years ago on adult uses. The Attorney General has ruled that you cannot ban it; you need to use Planning and Zoning concepts appropriately. Mr. Chiozzi asked why they could not designate it in the adult use area, and Mr. Materazzo explained that there is a childcare facility at the IRS.

Ms. Duff asked if there were certain building restrictions that would allow them to grow on premises. Mr. Materazzo stated that each facility may have an indoor secure area for growth. Local farmers have an agricultural exemption. Attorney Urbelis added that the ByLaw would only be for dispensaries. Ms. Duff questioned if it would really be secure.

Medical Marijuana (cont'd):

Bill Stearns of 22 Hidden Road asked if the Board could make the maps available prior to any meeting. Mr. Materazzo gave him a copy of the map.

Cheryl Todisco of 14 Bradley Road stated that she is a middle school health teacher and she welcomed the opportunity to sit down with Mr. Materazzo to discuss the implications of having marijuana dispensaries in Town. In the past year there have been three heroin overdoses in Town. At a recent drug forum that she attended the presenting detective stated that no one starts with heroin, they start with marijuana and alcohol. She understands that it is the law and she is familiar with the law, but she is concerned that as much as it is monitored and controlled it will just lead to more drugs in the community. The community needs to put preventative measures in place to make sure that does not happen. Ms. Duff assured Ms. Todisco that the police are actively involved in the process.

It should be noted that after the discussion on medical marijuana, Ms. Duff and Ms. Byerley left the meeting and did not return.

Reynold's Street:

Mr. Chiozzi began the discussion on Reynolds Street. Bill Johnson owner of 3 Reynolds Street asked the Board to allow him to post a security bond for the road so that the Planning department can release the paperwork to the Building Inspector's office so that he can obtain a building permit. For the past ten years lawsuits in Superior Court, Land Court and Appeals Court have kept him from being able to get the building permit. In the latest appeal, the complainants asked that the court annul the Planning Board's decision to allow the pavement to be kept in its current location. In a conference call with all parties on October 24th, Mr. Johnson's attorney offered to move the pavement according to the original conditions and the complainants' attorney stated that they wanted Mr. Johnson to resubmit the whole subdivision and start over. Mr. Johnson stated that the complainants do not want the pavement moved, nor does he, the abutters or the Planning Board so this is just a quagmire that is costing him and the Town a lot of money, time and effort. The current appeal will be resolved by the courts in one of two ways, the pavement will either stay where it is or it will have to be moved. The Board has the discretion not to enforce its own conditions. This is not changing a lot line or other important components of the subdivision. The vital access to the lot has been on the ground for ten years. Mr. Johnson also asked the Board that any speakers be kept on point.

Bernadette Lyons of 12 High Vale Lane stated that Mr. Johnson does not own Reynolds Street. The rights to the road from his lot, the former Barash lot, were extinguished by Mr. Barash twenty years ago. She, along with the Murphy's and the McIntyre's own Reynolds Street and she wants her private property rights to be protected. She does not want Mr. Johnson to be able to use her property for his own use.

Cheryl Murphy of 233 Andover Street stated that if they are on the subject of protecting property interest, it should be noted that the pavement cannot legally be moved unless everyone with rights in the road agrees for it to be moved.

Reynold's Street (cont'd):

Mr. Johnson stated that Mrs. Lyons was speaking off point. His land is registered land, the plan and the deed were approved by Land Court and in the deed it says that he has perpetual rights to use Reynolds Street along with others who have rights in those streets. To state that Mr. Barash relinquished his rights in 1994 is not true. Mrs. Murphy stated that land court does not approve deeds before they are filed and Mr. Barash extinguished his rights in Reynolds Street so he cannot grant to someone else that which he does not own. No recorded plan or deed can create an easement that does not exist.

Ms. Foster asked if anyone else had any comment on the performance bond. John McIntyre of 231 Andover Street stated that the pavement should stay where it is because he and the Murphy's will be impacted the most and they want it to stay in place. Ms. Foster made it clear that they are only voting on accepting a performance bond for the road tonight. Ms. Lyons stated that she strenuously objects to a bond for the roadway because it interferes with private property rights.

On a motion by Ms. Foster seconded by Mr. Bergeron the Board moved not to accept a bond for the construction or relocation of the pavement on Reynolds Street. **Vote:** Unanimous (4-0).

On a motion by Ms. Foster seconded by Mr. Bergeron the Board moved that in accordance with Condition #6 of the Reynolds Street subdivision approval, the Board hereby approves (1) the connection of other driveways to the paved road by persons who have rights to so connect, and (2) the use of the paved roadway by owners of any other lots or properties who have rights to use the paved roadway. **Vote:** Unanimous (4-0).

Minutes:

On a motion by Mr. Bergeron seconded by Ms. Foster the Board moved to approve the minutes as written for August 27, 2013, September 10, 2013, September 24, 2013 and October 8, 2013. **Vote:** Unanimous (4-0).

Adjournment: The meeting was adjourned at 8:57 p.m.